

226442

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

February 16, 2010

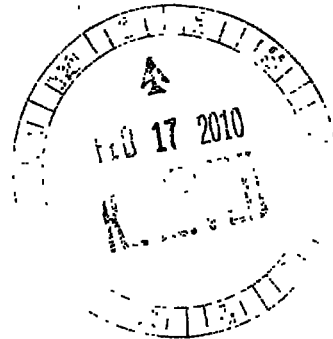
By UPS overnight mail

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings

FEB 17 2010

Part of
Public Record



Re: Finance Docket No. 35346, *Nebraska Northwestern Railroad, Inc. -- Purchase, Lease and Operation Exemption -- Dakota, Minnesota & Eastern Railroad Corporation*

Dear Section of Administration Chief:

Hereby transmitted is the original and 10 copies of a Supplement to Joint Petition For Rejection Or Stay Of Exemption for filing with the Board in the above referenced matter.

A Board acknowledgment of filing of the Joint Petition on February 5, 2010 was received by the undersigned, but the Joint Petition does not appear on the STB's website as filed. Please advise if the Joint Petition submitted for filing on February 5, 2010 should be refiled.

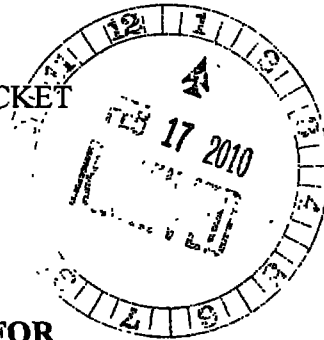
Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Petitioners

BEFORE THE
SURFACE TRANSPORTATION BOARD

NEBRASKA NORTHWESTERN)	
RAILROAD, INC. -- PURCHASE, LEASE)	FINANCE DOCKET
AND OPERATION EXEMPTION --)	NO. 35346
DAKOTA, MINNESOTA & EASTERN)	
RAILROAD CORPORATION)	



**SUPPLEMENT TO JOINT PETITION FOR
REJECTION OR STAY OF EXEMPTION**

WEST PLAINS CO.
4800 Main Street, Suite 274
Kansas City, MO 64112

NEBKOTA RAILWAY, INC.
111 North Main Street
Chadron, NE 69337

Petitioners

ENTERED
Office of Proceedings

FEB 17 2010

Part of
Public Record

By: PAUL M. DONOVAN
LAROE, WINN, MOERMAN
& DONOVAN
1250 Connecticut Avenue, NW
Washington, DC 20036
(202) 298-8100
paul.donovan@laroelaw.com

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Petitioners

DATE FILED: February 17, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

NEBRASKA NORTHWESTERN)	
RAILROAD, INC. -- PURCHASE, LEASE)	FINANCE DOCKET
AND OPERATION EXEMPTION --)	NO. 35346
DAKOTA, MINNESOTA & EASTERN)	
RAILROAD CORPORATION)	

**SUPPLEMENT TO JOINT PETITION FOR
REJECTION OR STAY OF EXEMPTION**

Pursuant to 49 C.F.R. § 1150.32(c), NEBKOTA RAILWAY, INC. (NRI) and WEST PLAINS CO. (WPC), (collectively, Protestants), hereby file this Supplement to their Joint Petition for Rejection or Stay of Class Exemption in this proceeding (Supplement). The Joint Petition was filed on February 5, 2010. Both the Joint Petition and this Supplement are timely. In a Notice to the Public in this proceeding, served February 10, 2010, the Board provided for the filing of Petitions for Stay of the involved transactions on or before February 17, 2010.

On February 12, 2010, in STB Finance Docket No. 35352, Protestants filed a Petition for Declaratory Order that the class exemption for noncarrier acquisition and operation of rail lines under 49 C.F.R. § 1150.31, *et seq.*, is limited to circumstances where the acquiring non-carrier will (1) actually perform rail service; (2) not unreasonably interfere with the operations of an incumbent shortline rail carrier who is providing service over the rail line; (3) not seek to extract a payment from the incumbent shortline rail carrier to permit it to provide service; and (4) not interfere with the economic welfare of the only substantive shipper using the line.

The background and the identity and interest of Protestants were explained in the Joint Petition at 2-5. That matter is hereby adopted by reference, as is the Section of that Joint Petition on Standards for Rejection or Stay of Class Exemptions at 5-6.

ADDITIONAL GROUND FOR REJECTION OF STAY OF EXEMPTION

The Joint Petition is hereby supplemented to provide an additional ground for rejection or stay of the proposed exemption, i.e., that Nebraska Northwestern Railroad, Inc. (NNW) has failed to provide, on a timely basis, at Protestant's request, copies of relevant documents and a response to a highly relevant inquiry. Attached to this Supplement as Appendix 1 is a true and correct copy of a letter dated February 3, 2010 from one of the attorneys for Protestants to the attorney of record for NNW. That letter was sent by e-mail for same-day receipt by NNW's attorney. A confirmation copy was sent to that attorney by U.S. mail, properly addressed and posted. There has been no indication that either the e-mail or the U.S. mail copy of that letter was not received by NNW's attorney.

The letter (Appendix 1) asked for copies of documents that are unquestionably relevant to the lawfulness of the proposed exemption, i.e., the Purchase Agreement, the Lease Agreement, and any maintenance, operating, financial, or traffic agreements between NNW and Dakota, Minnesota & Eastern Railroad Corporation (DME) that relate in any way to NNW's purchase or lease of rail lines from DME. The letter also posed a highly relevant inquiry, i.e., whether NNW intended to cancel or to continue in effect a Haulage Agreement between NRI and DME, to which NNW would succeed by virtue of its purchase of the rail line over which haulage pursuant to that Agreement is performed.

In recognition of the highly accelerated procedure associated with processing of class exemptions, Protestants respectfully requested that such documentation and response to inquiry be provided on an expedited basis.

Two weeks have passed since that request for documentation and information. There has been no response to that request by NNW. Even if NNW were to provide the requested documents and information at this time, it would be too late for Protestants to analyze those documents and information on any meaningful basis in order to be in a position to intelligently comment on them by the February 17, 2010 deadline for petitions to stay the exemption in this matter.

NNW's stonewalling of proper requests for highly relevant documents and information constitutes an additional ground for rejection or stay of the class exemption in this proceeding. NNW should not be permitted to take advantage of the highly accelerated procedure associated with the class exemption when it has failed and refused to provide documentation and information that is likely to bear on whether or not such accelerated procedure is appropriate under all of the relevant facts of the matter.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reason stated in this Supplement and for the reasons stated in the Joint Petition, the Notice of Exemption filed by NNW should be rejected, and NNW should be required to file an Application under 49 U.S.C. § 10901 or a Petition for Exemption under 49 U.S.C. § 10502(a) if it desires to progress the proposed acquisition and lease of rail lines. At the very least, the effective date of an exemption for such acquisition and lease should be stayed


pending completion of a Board investigation into the lawfulness of such acquisition and operation.

Respectfully submitted,

WEST PLAINS CO.
4800 Main Street, Suite 274
Kansas City, MO 64112

NEBKOTA RAILWAY, INC.
111 North Main Street
Chadron, NE 69337

Petitioners

Paul M. Donovan 

By: PAUL M. DONOVAN
LAROE, WINN, MOERMAN
& DONOVAN
1250 Connecticut Avenue, NW
Washington, Dc 20036
(202) 298-8100
paul.donovan@laroelaw.com

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorneys for Petitioners

DATE FILED: February 17, 2010

LAW OFFICE
THOMAS F. MCFARLAND, PC.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

Appendix 1

THOMAS F. MCFARLAND

February 3, 2010

*By e-mail to
mblaszak@mblaszak.interaccess.com,
w/confirmation by mail*

Michael Blaszak, Esq.
211 Leitch Avenue
LaGrange, IL 60525-2162

Re: Finance Docket No. 35346, *Nebraska Northwestern Railroad, Inc. - Purchase, Lease, and Operation Exemption - Dakota, Minnesota & Eastern Railroad Corporation*

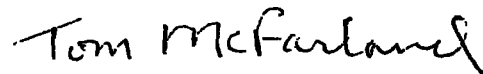
Dear Mike:

In behalf of Nebkota Railway, Inc. (NRI) and West Plains Co. (WPC), you are respectfully requested to provide copies of the Purchase Agreement, Lease Agreement, and any maintenance, operating, financial and/or traffic agreements between Nebraska Northwestern Railroad, Inc. (NNW) and Dakota, Minnesota & Eastern Railroad Corporation (DME) that relate in any way to NNW's purchase and lease of rail lines from DME.

You are also respectfully requested to advise whether a Haulage Agreement between DME and NRI dated October 14, 2008 covering traffic between Chadron and Dakota Junction, NE has been assigned to NNW and, if so, whether NNW intends to cancel that Agreement or to continue that Agreement in effect for the foreseeable future.

Inasmuch as proceedings at the STB in regard to NNW's purchase, lease, and operation of DME rail lines are quite accelerated, you are respectfully requested to provide the requested documents and the answers to the inquiries in the previous paragraph on an expedited basis, preferably by electronic mail or overnight mail to be received by me by the close of business tomorrow, February 4. NRI and WPC are agreeable to paying your reasonable costs in copying and expediting transmission of the requested documents and information.

Very truly yours,



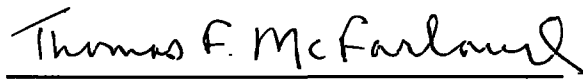
Thomas F. McFarland
*Attorney for Nebkota Railway, Inc.
and West Plains Co.*

TMcF.kl:wp8.0\1419\lrmbl

cc: Mr. Bryce Wells, *by e-mail*

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2010, I served the foregoing document, Supplement To Joint Petition For Rejection Or Stay Of Exemption, on Michael Blaszak by e-mail, *blaszak@blaszak.interaccess.com*, and by first-class, U.S. mail, postage prepaid, 211 Leitch Avenue, LaGrange, IL 60525-2162.



Thomas F. McFarland